



ultimately terminating his employment. Counts II and III purport to state claims for common law defamation under Virginia law. In Count III, Mann claims that HKD defamed him by: (1) sending an internal e-mail to HKD employees stating that Mann had been placed on administrative leave pending an internal investigation; and (2) by making unspecified statements to other persons and entities that Mann claims falsely imputed to him a criminal offense involving moral turpitude. In Count IV, Mann claims that HKGmbH defamed him when one of its alleged agents allegedly told HKD's former President (Brian Marvin) that Mann had shot and killed a man under questionable circumstances.

Each of these Counts fails to state a claim upon which relief may be granted, for the following reasons:

(1) The two FCA retaliation claims (Counts I and II, against both Defendants) fail to allege that Mann engaged in any statutorily protected activity.

(2) The first FCA retaliation claim (Count I) fails to allege any facts that would establish that Mann's alleged actions put Defendants on reasonable notice that he was taking action in furtherance of a *qui tam* lawsuit.

(3) The first defamation claim (Count III, against HKD only) suffers from two fatal defects. First, the allegations of Mann's own Amended Complaint establish that the statement that Mann had been placed on administrative leave pending an internal investigation was not a false statement<sup>1</sup> and, therefore, cannot form the basis of a defamation claim. Second, the other alleged statements on which Mann's first defamation claim is based are not alleged with the degree of particularity required under Virginia law.

(4) The second defamation claim (Count IV, against HKGmbH only) fails to plead the

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<sup>1</sup> At a minimum, the Amended Complaint fails to meet Mann's burden of pleading falsity with sufficient factual allegations.

alleged defamatory statements with the degree of particularity required under Virginia law.

For these reasons, as set forth in detail in the attached memorandum of points and authorities in support of this motion, Defendants respectfully request that the Court dismiss Mann's Amended Complaint in its entirety with prejudice.

Dated: August 22, 2008

Respectfully submitted,

/s/

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**CERTIFICATE OF SERVICE**

I hereby certify that on 22 August 2008, I filed a copy of the foregoing Motion to Dismiss of Defendants Heckler & Koch Defense Inc. and Heckler & Koch GmbH on the Court's ECF system and caused a copy of the foregoing motion to be served by first-class U.S. mail on:

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